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ABSTRACT

This presentation outlines the complaint investigation process developed by the Maine Department of Education to ensure a timely response to complaints concerning special education services, and to provide third party mediation and arbitration as needed. Complaint procedures required under federal regulations are outlined. Strengths and weaknesses of the use of due process hearings and complaints under the Educational General Administrative Regulations and state regulations are also discussed. Advisory rulings from the United States Department of Education concerning complaints procedures are reviewed, and strategies for effectively responding to complaints are put forth. (PB)

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PRESENTATION

70th Annual Convention of the Council for Exceptional Children
Baltimore, Maryland
April 17, 1992

Title: The Third Wave of Due Process - State Special Education Complaint Investigations

Presenter: Michael J. Opuda, M. Ed., Due Process Consultant, Maine Department of Education

Description of the Session

State Special Education Complaint Investigations will be the next wave of challenges to confront special education administrators. Due process hearings, EDGAR complaints, and the proposed complaint procedures under IDEA will be compared. Effective policies and procedures for resolving complaints will be discussed.

Parents are aware of and have exercised their rights to challenge decisions made by a school concerning the provision of special education services to their child by initiating a due process hearing or by filing a complaint with the U. S. Office for Civil Rights. Parents and schools are not as knowledgeable of their right to initiate special education complaint investigations through their state's Department of Education.

The Individuals with Disabilities Education Act establishes the right of parents to challenge any decision made by a school regarding the identification, programming, placement, or provision of a free appropriate public education to their child with a disability. Parents and schools that have experienced a due process hearing have expressed general dissatisfaction with an adversarial process that is overly litigious, expensive and fails to foster cooperative relationships between parents and school. Some parents have been unwilling to initiate a due process hearing because they were unable to secure the services of an attorney or advocate, they perceived the process as too complex, or they were fearful of retaliation by the school.

Section 504 of the Rehabilitation Act of 1973 authorizes the Office for Civil Rights, U. S. Department of Education to investigate allegations that a recipient of federal monies has failed to provide a free appropriate public education to a qualified handicapped student. Section 504 complaints have increased dramatically in the previous three years as parents, advocates, and schools have become increasingly aware of Section 504 as a possible remedy for disputes between parents and schools regarding appropriate services for students with disabilities. Section 504 complaints, unlike due process hearings, have proven to be less expensive, less demanding upon parents to present their case through evidence and testimony, and do not require the services of an attorney or advocate.

EC 302398

Additionally, the Office for Civil Rights will investigate allegations of retaliation by schools against a party which has filed a complaint. Schools have challenged the authority of the Office for Civil Rights to intervene in educational matters and the burdensome demands for records, policies and procedures. Parents have expressed concerns regarding the excessive timeframes in which complaints are investigated and resolved.

The United States Department of Education General Administrative Regulations (34 CFR Section 76.780) require that each state adopt a written procedure to investigate and resolve within 60 days any complaint that a school has violated a Federal special education statutes or regulations. Additionally, many states have laws which require the State Department of Education to investigate any complaint filed by a parent or other interested party which alleges that a school has failed to comply with state special education laws and regulations.

The Office of Special Education Programs in the U.S. Department of Education has proposed revisions to the Federal Special Education Regulations at 34 CFR 300. A new section to the procedural safeguards has been proposed which will track the language of the EDGAR regulations

The Maine Department of Education has developed a complaint investigation process which ensures a timely response to complaints and provides an opportunity for both parties to meet with a neutral third party to clarify and resolve their dispute through a unique combination of fact finding, mediation, and arbitration. This process has been shown to be less intimidating to both schools and parents while limiting expenses and adversarial procedures.

This presentation will discuss the following topics:
1. The complaint procedures required under Federal regulations;
2. The pros and cons of the use of due process hearings, EDGAR complaints, and state complaints;
3. Advisory Rulings from the U. S. Department of Education concerning complaints procedures;
4. Strategies for effectively responding to complaints, and;
5. The Maine Department of Education Complaint Management System.

An opportunity for questions regarding the complaint process and copies of the Maine Special Education Complaint Procedures will be provided.

The Failure of Due Process

No one likes to go to a hearing. The perceptions of parents and school officials regarding the fairness of Due Process hearings was the focus of a study by Goldberg and Kuriloff (Exceptional Children 5/91). The Authors report that:

	% Positive Response	
	Parents	Schools
Opportunity to present their position	58	84
Legal rights afforded	51	95
Fairness accorded	41	88
Accuracy of Hearing officer's Decision	36	80
Satisfaction with Decision	33	72
Satisfaction with Hearing	35	70
Current Response to Hearing Experience	11	48

Goldberg and Kuriloff note that for both parents and school officials "the more they won, the more they perceived the hearings as fair and the more satisfactory they rated them; and the less they won, the less they perceived the hearings as fair and the more dissatisfied they were.

I submit that the very nature of the IDEA establishes an adversarial relationship between parents and educators. Parents want what's best for their children. They want the best possible program and services for their children. School's are not required to provide the best program or to maximize a child's potential. Schools are required to provide an appropriate program. The Rowley Court has defined appropriate as a program "reasonable calculated to allow the student to benefit."

To ensure that educators don't make unilateral decisions which effectively deny students their right to an education a series of due process procedural safeguards were established in IDEA.

The procedural safeguards afforded parents under IDEA are based on a number of faulty assumptions:

1. Educators can agree on educational diagnoses.
2. Special education can only be provided by special educators.
3. Educators know which special education interventions will remediate each disability.

4. Educators have a wide array of services, personnel, and placements at their disposal and unlimited monies to access these resources.

Congress believed that by establishing a hearing process parents would be afforded a fair and impartial decision maker who would resolve disputes between parents and schools. I am not convinced that Congress intended the due process system to evolve into the current overly adversarial and litigious system that currently exists.

The Maine Experience

Maine has seen a shift away from hearings to resolve issues and towards state complaint investigations.

For the period 1985 through 1991:

Hearings have increased from 32 /year to 51 /yr. A 59 % increase

Mediations have decreased from 32 / year to 16 /yr. A 50 % decrease.

Complaints have increased from 7 /yr. to 44 /yr. A 628 % increase

Why the decrease in mediations?

Function of perceived interpersonal skills and implied threat to administrator's negotiation skills.

State no longer "requiring" as part of the hearing process.

Why the increase in complaints?

Increased publicity - In 1988 the Maine Special Education Regulations were revised and schools were required to advise parents of their right to file a written complaint with the Maine Department of Education (State Complaint) or the District Superintendent (Local Complaint).

Increased Training - Parent training conducted by the DOE, Special needs Parent Information Network (SPIN), State Protection and Advocacy System.

Cuts in funding for parent assistance - Recent budget problems within the state has resulted in a loss of funding for parent advocacy services. This has resulted in parents being unable to secure legal representation for hearings while still able to consult with advocates concerning compliance issues.

General dissatisfaction with hearing process - Lengthy, time away from work, costly to both districts and parents (attorney fees, substitutes, prep time.) and alienating

Similar timeframes to hearings -

Ability to address same issues as hearings

Less demanding on time and personnel

In sum - Complaints can address all the issues which hearings address at less cost and in a more timely and less litigious manner

What are the state complaint procedures?

Education Division General Administrative Regulations (EDGAR)
(34 CFR, Section 76.780)

Complaint Procedures of the State

Section 76.780 A State shall adopt Complaint procedures.

(a) A State shall adopt written procedures for-
(1) Receiving and resolving any Complaint that the State or a subgrantee is violating a Federal statute or regulations that apply to a program;
(2) Reviewing an appeal from a decision of a subgrantee with respect to a Complaint; and
(3) Conducting an independent on-site investigation of a Complaint if the State determines that an on-site investigation is necessary.
(b) Sections 76.780-76.782 apply to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.
(c) Sections 76.780-76.782 do not apply to the program under Title I of the Elementary and Secondary Education Act.

Section 76.781 Minimum Complaint procedures.

A State shall include the following in its Complaint procedures:
(a) A time limit of 60 calendar days after the State receives a Complaint-
(1) If necessary, to carry out an independent on-site investigation; and
(2) To resolve the Complaint.
(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular Complaint.
(c) The right to request the Secretary to review the final decision of the State.

Section 76.782 An organization or individual may file a Complaint.

An organization or individual may file a written signed Complaint with a State. The Complaint must include-
(a) A statement that the State or a subgrantee has violated a requirement of a Federal statute or regulations that apply to a program; and
(b) The facts on which the statement is based.

1. When is the complaint procedure appropriate? or when is a "complaint" a "complaint"?!

A complaint must be in writing and signed by the complainant and submitted to the SEA;

The complaint must allege that a school administrative unit or private school serving exceptional students has failed to comply with State or Federal Special Education Regulations, and;

The complaint must clearly indicate that the complainant wishes the Department to investigate the allegations.

The SEA has some discretion in determining what qualifies as a complaint. Telephone calls, anonymous letters, or general letters containing unspecified allegations of non-compliance may warrant a follow-up by the Department to gather more information.

2. May the SEA change a complaint into a hearing or mediation?

In December 1989, the Maine Department of ED thought we had a wide authority in determining an appropriate response to a complaint. Complaints that were seeking prospective remedies, (i.e. the IEP for the current school year is not appropriate, or the student requires a less restrictive placement than he currently has), would generally be considered a hearing issue for which a hearing officer would be assigned. Complaints, by their very nature, were a retrospective analysis of a district's compliance with the State Special Education Regulations.

HOWEVER, an OSEP Advisory Ruling to the Washington Department of Education (EHLR 213:242) stated that the Department has <u>no authority to change a complaint into a hearing or mediation</u>.

If a party files a complaint, the Department of Education must investigate the complaint.

3. What is the scope of the complaint investigator's authority to access records of an individual or other children, or to review the complaint at a system's level versus an individual level?

The complaint investigator, as an agent of the Commissioner appointed to investigate the complaint, has a wide range of authority to access educational records that are relevant to the complaint, FERPA (34 CFR 99.31(a)(3)(iii), and Me. Special Ed. Regs. 101.12.4).

If the complaint is specifically alleging non-compliance by the district to a group of students, then the complaint investigator should review a representative sample.

If the complaint is limited to a particular student, then the record review should be limited to that student.

However, if during the course of an investigation, the complaint investigator identifies a systemic failure to comply with the State or Federal Special Education Regulations; this failure may be cited as an "ancillary issue" in the complaint investigation report.

4. What are the remedies available to complaint investigators?

The complaint investigator has a number of remedies available, including both individual and systemic remedies.

At the individual level, the complaint investigator has all the remedies that would be available through a Due Process Hearing. The complaint investigator may require a PET meeting, an independent evaluation or reevaluation of the student, compensatory services, or reimbursement to the parent for out-of-pocket expenses.

At the systems level, the complaint investigator has the authority to require the district to review and revise the district's policies and/or procedures to ensure compliance with regulations; to require that the district provide in-service training to staff; and to take such other corrective action as is necessary to ensure compliance with the state regulations.

5. What can be done to streamline the complaint investigation process in order to reduce unnecessary delays and paperwork?

A. When a complaint is received by the SEA, the clock starts ticking on the 60 day time limit.

B. The Due Process Consultant contacts the complainant to explain the complaint process and clarify the complaint; develops the "Complaint Summary Form" (which lists names addresses, and the allegations); and drafts the letter appointing the complaint investigator. Maine contracts with the SEA Hearing Officers to do complaint investigations. This tactic ensures an impartial decision maker, keeps the Hearing Officer's sharp, and end runs the freeze on hiring new staff.

C. The parent and the school system are sent copies of the appointment letter, "Complaint Summary Form", and the complaint. They are both advised to submit any additional documentation and the school is directed to submit a response to the complaint directly to the complaint investigator approximately 2 - 4 weeks after the complaint is received by the Department.

D. The complaint investigator develops a preliminary complaint investigation report by reviewing the documentation, the school's response, and conducting such telephone or on-site interviews as is necessary.

E. The complaint investigator conducts a "Fact Finding Meeting" with the parent and the school approximately 4 - 6 weeks from the date the complaint is received. The purpose of this meeting is to review the complaint investigator's preliminary findings and conclusions, to clarify any unresolved issues, and to gather any additional information in order to develop a final report .

F. If the complaint investigator believes that Probable Cause will be found that the school is in noncompliance, then the complaint investigator will discuss with both parties a "Corrective Action Plan" which will resolve the complaint to the satisfaction of both parties.

G. The complaint investigator develops a final complaint investigation report approximately 6 - 8 weeks from the date the complaint is received. This complaint investigation report is provided to all parties with a copy to the SEA.

6. Who develops the Corrective Action Plan? Is this developed by the complaint investigator, or recommended to the Commissioner?

The complaint investigator develops the "Corrective Action Plan" based on discussions with the parties at the "Fact Finding Meeting".

Previously the Corrective Action Plan was drafted by the complaint investigator as a proposed plan which was reviewed and revised between the Due Process Consultant, Division Director, Associate Commissioner and the Commissioner. The development and modification of the Corrective Action Plan without the active participation of the parent and the school system frequently resulted in the district or the parent not agreeing that the corrective action plan effectively resolved the problem, or the district's failing to come into compliance with the corrective action plan to the satisfaction of the parent. The process identified above has reduced this inherent conflict and resulted in a more amicable resolution to most complaints.

7. What is the appropriate format for complaint investigation reports?

The general format would include a cover letter from the complaint investigator to both parties, with a copy to the Department of Education.

Format for Complaint Investigation Reports

I. Identifying Information

A. Complainant
B. School
C. Student

} From Complaint Summary Form

D. Summary of Complaint Investigation Activities

Including dates for receipt of complaint, appointment, response from the school, other documentation, on-site or telephone interviews, fact-finding meeting, etc.

E. Background Material

A short paragraph or two which describes the current situation involving the student, and provides sufficient background so that a party can understand the context under which the complaint had been filed.

II. Allegations Contained in the Complaint

III. Findings of Fact

Just the facts. Supporting documentation and uncorroborated facts or opinions are noted.

IV. Conclusions

"Probable Cause" or "No Probable Cause" is indicated followed by one or two paragraphs indicating the findings that were used to reach that conclusion.

V. Ancillary issues

This section is used if the complaint investigator identifies other issues of non compliance which are not part of the complaint but which need to be corrected by the school.

VI. Corrective Action Plan

The corrective action plan states specifically the steps the district must take in order to achieve compliance. Generally, the timeframes for completing the corrective Action Plan are 30 days from the date of receipt of the Final Complaint Investigation Report. The school is required to submit documentation of compliance to the Due Process Consultant.

8. What happens after the Complaint Report is distributed?

The SEA must determine that compliance has been achieved by the school system within 45 days of the determination of Probable Cause. If the school has failed to come into compliance, the Department initiates a hearing between the parties.

Lessons Learned in Complaint Management

May a parent file a complaint and request a hearing?

"The due process and complaint procedures are two separate, distinct, and independent remedies available to students with disabilities and their parents, to resolve issues of disagreement between parents and local school districts." (OSERS Letter to Edna Johnson, Esq., December 4, 1991, (18 IDELR 589)).

Parents may opt to use either the complaint or the hearing process; "It is impermissible for an SEA to have a procedure that automatically removes complaints from the jurisdiction of its complaint management system until after a due process hearing is conducted. EDGAR requires the SEA to resolve any complaint it receives regardless of whether the complaint concerns a matter that is also appropriate for a request for a due process hearing." (OSEP Advisory Ruling to the Director of Special Education, Washington Dept. of Ed., June 21, 1989, (EHLR 213:242))

May an LEA be subject to a complaint investigation and a hearing on the same issues at the same time?

A State may hold a complaint in abeyance if a parent has already filed a request for a hearing and then files a complaint or simultaneously files a request for a hearing. It is reasonable for the State "to defer to the hearing officer's judgment to avoid the possibility of conflicting decisions". (OSEP Advisory Ruling to the Director of Special Education, Washington Dept. of Ed., June 21, 1989, (EHLR 213:242), (see also Johnson 18 IDELR 589)).

An SEA may hold a complaint in abeyance until the completion of the hearing, the SEA must proceed with the complaint investigation of other issues not addressed in the hearing. (OSERS letter to Senator Charles Robb, January 16, 1991, (17 EHLR 468)).

May a parent request a hearing after resolving a complaint on the same issue?

Agreement reached by parent and school through the complaint resolution process does not bar the parent from seeking a due process hearing on the same or similar issue. However, party seeking hearing "must substantially demonstrate that the complaint process did not address and resolve the questions being presented in hearing." (SEA Decision - Illinois Case No. SE-10-85 April 3, 1985 (EHLR 507:188))

"...(T)he results of a complaint investigation may be used as evidence in a due process hearing." (OSERS Letter to Edna Johnson, Esq., December 4, 1991, (18 IDELR 589)).

If a parent has had a complaint and a hearing on the same issue, which decision is controlling?

"The hearing officer's decision would prevail over a complaint investigation decision regarding the same issue." (OSERS Letter to Edna Johnson, Esq., December 4, 1991, (18 IDELR 589)).

May a parent waive their right to any further complaints or hearings as a condition of settlement?

An SEA must accept and process an EDGAR Complaint from a student who has previously signed an LEA's release purporting to waive his right to an EDGAR Complaint; An individual is not authorized to release an SEA from the SEA's obligations under Federal Regulations. (OSERS Letter to Victor Contrucci, March 26, 1986, (EHLR 211:380))

May an LEA be subject to a complaint investigation and due process hearing on different issues brought by the same party simultaneously?

"The State cannot refuse to investigate (a complaint) because the parent has the opportunity to seek a due process hearing." (OSERS Letter to Edna Johnson, Esq., December 4, 1991, (18 IDELR 589)).

May a State require a parent to use either the due process hearing or complaint procedures?

"It is impermissible under EHA-B and EDGAR for states to advise or in essence require parents to request a due process hearing before the state can initiate a complaint investigation." (OSEP Advisory Ruling to the Director of Special Education, Washington Dept. of Ed., June 21, 1989, (EHLR 213:242)).

"The EDGAR Complaint procedures require the SEA to resolve any complaint it receives, regardless of whether the complaint concerns a matter that would also be an appropriate subject for a request for a due process hearing." (OSERS letter to Senator Charles Robb, January 16, 1991, (17 EHLR 468)).

May a State accept an LEA's response to a complaint as a final determination?

An SEA has considerable discretion in determining the methods to be employed in investigating complaints. The acceptance of a verbatim response from the LEA is not inconsistent with EDGAR. (OSERS Letter to Marlene Miller, June 10, 1988, (EHLR 213:145)).

What are the time frames for a request for a U. S. Dept. of Ed. Review?

"No firm time limit has been established for when an appeal of a State educational agency decision on a complaint must be filed with this Department. Thus, we will be happy to receive and consider your request for appeal at any time" (OSEP Letter of September 15, 1988 to JoEllen Lane, (EHLR 213:168))

"...(A)fter a complaint has been filed with the State and the State has acted on it, the complainant may request the Secretary of Education to review the state's final decision. EDGAR does not contain timeframes for the filing of requests for Secretarial review." (OSERS Letter of December 27, 1989 to Stewart Hakola, Esq., (16 EHLR 293))

Under what conditions will the U. S. Dept. of Ed. review an SEA complaint investigation decision?

"...(G)enerally, requests for secretarial review are granted only when the case presents an issue of legal interpretation rather than a factual issue." Review was declined since the appeal revolved around "essentially factual issues" concerning an interim IEP. (OSERS Letter of March 2, 1988 to Martha McVicker, (EHLR 213:117))

Secretary review is discretionary, the decision of Michigan DOE is consistent with Federal and State requirements, and denied review. (OSERS Letter of April 15, 1988 to Stewart Slatkin, Esq. (EHLR 213:128))

PROPOSED AMENDMENT TO FEDERAL SPECIAL EDUCATION REGULATIONS

The U.S. Department of Education has proposed a number of amendments to the Federal Regulations implementing the IDEA. The Notice of Proposed Rulemaking was published on Monday, August 19, 1991. The comment period closed November 18, 1991. Many SEA's, Lea's and parents are patiently awaiting the revised rules. I understand the rules will be finalized in "mid-April", unfortunately they didn't indicate which year.

These proposed rules are quite similar to the EDGAR requirements and closely track the Part H complaint procedures at 34 CFR 303.510 - 512.

I would like to highlight those sections which differ or are in addition to the EDGAR requirements.

Sec. 300.660 Adoption of State complaint procedures.

Each State educational agency shall adopt written procedures for:
(a) Receiving and resolving any complaint that any public agency is violating a requirement of Part B of the Act or of this part;
(b) Reviewing an appeal from a decision of a public agency with respect to a complaint;
(c) Conducting an independent on-site investigation of a complaint if the State educational agency determines that an on-site investigation is necessary; and
(d) Informing parents and other interested individuals about the procedures in Secs. 300.660-300.662.

Sec 300.661 Minimum State complaint procedures.

Each State educational agency shall include the following in its complaint procedures:
(a) A time limit of 60 calendar days after the State educational agency receives a complaint to --
(1) Carry out an independent on-site investigation, if necessary;
(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and
(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--
(i) Findings of fact and conclusions; and
(ii) The reasons for the State educational agency's final decision.
(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.
(c) Procedures for effective implementation of the State educational agency's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.
(d) The right to request the Secretary to review the State educational agency's final decision

Sec. 300.662 Filing a complaint
An organization or individual may file a written signed complaint with a State educational agency. The complaint must include--
(a) A statement that a public agency has violated a requirement of Part B of the Act or of this part; and
(b) The facts on which the statement is based.
(Authority: 20 U.S.C. 2831(a))

The following chart provides a neat comparison of Hearings, EDGAR Complaints and IDEA Complaints:

COMPARISON OF RIGHTS AFFORDED

RIGHT	HEARINGS	EDGAR COMPLAINT	IDEA COMPLAINT
Attorney Fees	YES	NO	NO?
Witness	YES	NO	NO
Subpoenas	YES	NO	NO
Evidence	YES	YES	YES
5 day rule	YES	NO	NO
Time Frames	45 days	60 days	60 days
Extensions	YES	NO	NO
Location	Court	School	School
Transcript	YES	NO	NO
Parental Notice	YES	NO	YES
Appeal Process	SEA/Court	U.S. DOE	Court? /DOE
Stay Put	YES	NO	NO?
Hearing Officer	Impartial	SEA	SEA

Pro's and Con's of Hearings and Complaints

Attorneys:

Hearings - Both sides are typically represented by counsel

EDGAR / IDEA Complaints - Attorneys are rarely present

Attorney Fees:

Hearing - Attorney fees are available when parents prevail or school commits major procedure violation

EDGAR Complaints - no consistent record of attorney fees being awarded, claims under Section 1983 have prevailed, see also Wilson v. School District No. 1 (EHLR 556:235)

IDEA Complaint - Questionable - Authority for proposed rule cited as 20 USC 2831(a)

Witnesses:

Hearings - Both sides present and can compel the attendance of witnesses

EDGAR / IDEA Complaints - No testimony is received

Subpoenas:

Hearing - Parties have the right to compel the attendance of witnesses

EDGAR / IDEA Complaint - No testimony received

Evidence:

Hearings - Each side enters evidence into the record at the hearing

EDGAR / IDEA Complaint - Each side mails evidence to the investigator and other party. Maine process bars documents not previously provided to all parties

Five Day Rule:

Hearings - Each party must disclose 5 days prior to hearing

EDGAR Complaint - No requirement to disclose

IDEA Complaint - Note 300.662 (b) - "The facts on which the statement (of non-compliance) is based

Time Frames and Extensions:

Hearings - Multiply days, scheduling hassles, multiple delays

EDGAR / IDEA Complaints - Typically, 1 day for data gathering, 1 day for fact finding, Extensions only in exceptional circumstances

Location (Venu):

Hearing - Maine uses whenever possible courtrooms

EDGAR / IDEA Complaint - If investigation / factfinding is held, it's usually at the school.

Transcript:

Hearing - Parties are entitled to a transcript or an electronic verbatim recording of the hearing.

EDGAR / IDEA Complaint - No recording is made, if investigator uses tapes, parties are advised tapes are for personal use, not available to parties and destroyed after decision is written.

Parental Notice:

Hearing - prior to any proposal to significantly change program or placement

EDGAR Complaint - none required

IDEA Complaint - written procedures required to inform parents and other interested individuals

Appeal Process:

Hearing - To SEA if LEA hearing; to State or Federal Court is SEA hearing

EDGAR / IDEA Complaint - Appeal for review by the Secretary, U. S. Department of Education.

NOTE: Final agency action may cause appeal right to state court.
MAINE - permits parties to challenge findings, decision, and corrective action through hearing process.

Stay put:

Hearing - In effect through hearing and appeal

EDGAR Complaint - Not Applicable

IDEA Complaint - Not applicable but note language at 34 CFR 300.513: "During the pendency of any proceeding regarding a complaint...."

Cost:

Hearings - Admin. time, attorneys, substitutes, staff burn-out

EDGAR / IDEA Complaint - Administrative Time

DO's and DON'T's of Complaints

For SEA Staff

DO - establish a process that is timely and non-adversarial
- develop clear, written procedures
- verify facts with both parties
- negotiate a corrective action plan
- Provide sufficient notice of appeal process
- follow up to ensure compliance
- Hold compliant investigations in abeyance pending hearing decision
- Stay tuned for further developments
- Go "on site" whenever possible

DON'T - change a complaint into a hearing
- Assume anything about either party
- Advise parents to select one process over another
- Go "on site" just to beat up one side or the other

For Parents and Schools

DO - Lay all your cards on the table
- Remember that the only winner or loser is the child
- Provide the complaint investigator with any and all information related to the complaint
- Remember that reasonable, intelligent, and caring people can disagree
- Ask the question - "What can we do to fix this?"

DON'T - Play games
- Assume the other side or investigator knows anything